

REFERENCE TITLE: **employment discrimination; prohibition**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2726

Introduced by
Representatives Gallardo, Aguirre A, Burton Cahill, Downing, Garcia M,
Kirkpatrick, Lopez L, Lujan, Sinema, Senators Aboud, Brotherton,
Cheuvront, Mitchell, Rios: Representatives Bradley, Lopes, McCune Davis,
Meza, Prezelski

AN ACT

**AMENDING SECTIONS 41-1463 AND 41-1464, ARIZONA REVISED STATUTES; RELATING TO
DISCRIMINATION IN EMPLOYMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1463, Arizona Revised Statutes, is amended to
3 read:

4 41-1463. Discrimination; unlawful practices; definition

5 A. Nothing contained in this article shall be interpreted to require
6 that the less qualified be preferred over the better qualified simply because
7 of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
8 ORIENTATION, age, disability or national origin.

9 B. It is an unlawful employment practice for an employer:

10 1. To fail or refuse to hire or to discharge any individual or
11 otherwise to discriminate against any individual with respect to the
12 individual's compensation, terms, conditions or privileges of employment
13 because of the individual's race, color, religion, ~~sex~~ GENDER, GENDER
14 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age, disability or national
15 origin.

16 2. To limit, segregate or classify employees or applicants for
17 employment in any way ~~which~~ THAT would deprive or tend to deprive any
18 individual of employment opportunities or otherwise adversely affect the
19 individual's status as an employee, because of the individual's race, color,
20 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age,
21 disability or national origin.

22 3. To fail or refuse to hire, to discharge, ~~or~~ or to otherwise
23 discriminate against any individual based on the results of a genetic test
24 received by the employer, notwithstanding subsection I, paragraph 2 of this
25 section.

26 C. It is an unlawful employment practice for an employment agency to
27 fail or refuse to refer for employment or otherwise to discriminate against
28 any individual because of the individual's race, color, religion, ~~sex~~ GENDER,
29 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age, disability or
30 national origin or to classify or refer for employment any individual on the
31 basis of the individual's race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY
32 OR EXPRESSION, SEXUAL ORIENTATION, age, disability or national origin.

33 D. It is an unlawful employment practice for a labor organization:

34 1. To exclude or to expel from its membership or otherwise to
35 discriminate against any individual because of the individual's race, color,
36 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age,
37 disability or national origin.

38 2. To limit, segregate or classify its membership or applicants for
39 membership or to classify or fail or refuse to refer for employment any
40 individual in any way ~~which~~ THAT would deprive or tend to deprive the
41 individual of employment opportunities or would limit those employment
42 opportunities or otherwise adversely affect the individual's status as an
43 employee or as an applicant for employment because of the individual's race,
44 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
45 ORIENTATION, age, disability or national origin.

1 3. To cause or attempt to cause an employer to discriminate against an
2 individual in violation of this section.

3 E. It is an unlawful employment practice for any employer, labor
4 organization or joint labor-management committee controlling apprenticeship
5 or other training or retraining programs, including on-the-job training
6 programs, to discriminate against any individual because of the individual's
7 race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
8 ORIENTATION, age, disability or national origin in admission to or employment
9 in any program established to provide apprenticeship or other training and,
10 if the individual is an otherwise qualified individual with a disability, to
11 fail or refuse to reasonably accommodate the individual's disability.

12 F. With respect to an individual with a disability, it is an unlawful
13 employment practice for a covered entity to:

14 1. Participate in any contractual or other arrangement or relationship
15 that has the effect of subjecting a qualified individual with a disability
16 who applies with or who is employed by the covered entity to unlawful
17 employment discrimination.

18 2. Use standards, criteria or methods of administration that have the
19 effect of discriminating on the basis of disability or that perpetuate the
20 discrimination of others who are subject to common administrative control.

21 3. Exclude or otherwise deny equal jobs or benefits to a qualified
22 individual because of the known disability of an individual with whom the
23 qualified individual is known to have a relationship or association.

24 4. Not make reasonable accommodations to the known physical or mental
25 limitations of an otherwise qualified individual with a disability who is an
26 applicant or employee unless the covered entity can demonstrate that the
27 accommodation would impose an undue hardship on the operation of the business
28 of the covered entity.

29 5. Deny employment opportunities to a job applicant or employee who is
30 an otherwise qualified individual with a disability if the denial is based on
31 the need of the covered entity to make reasonable accommodation to the
32 physical or mental impairment of the applicant or employee.

33 6. Use qualification standards, employment tests or other selection
34 criteria that screen out or tend to screen out an individual with a
35 disability or a class of individuals with disabilities, unless the standard,
36 test or other selection criteria, as used by the covered entity, is shown to
37 be job related for the position in question and is consistent with business
38 necessity.

39 7. Fail to select and administer tests relating to employment in the
40 most effective manner to ensure that, when the test is administered to a job
41 applicant or employee who has a disability that impairs sensory, manual or
42 speaking skills, the test results accurately reflect the skills, ~~OR~~ aptitude
43 or whatever other factor of the applicant or employee that the test purports
44 to measure, rather than reflecting the impaired sensory, manual or speaking

skills of the applicant or employee, except if the skills are the factors that the test purports to measure.

G. Notwithstanding any other provision of this article, it is not an unlawful employment practice:

1. For an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or classify or refer for employment any individual, ~~or~~ or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual's religion, ~~sex~~ GENDER or national origin in those certain instances when religion, ~~sex~~ GENDER or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

2. For any school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university or other educational institution or institution of learning is in whole or in substantial part owned, supported, controlled or managed by a particular religion or religious corporation, association or society, or if the curriculum of the school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

3. For an employer to fail or refuse to hire or employ any individual for any position, for an employment agency to fail or refuse to refer any individual for employment in any position or for a labor organization to fail or refuse to refer any individual for employment in any position, if both of the following apply:

(a) The occupancy of the position or access to the premises in or upon which any part of the duties of the position are performed or are to be performed is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the president of the United States.

(b) The individual has not fulfilled or has ceased to fulfill that requirement.

4. With respect to age, for an employer, employment agency or labor organization:

(a) To take any action otherwise prohibited under subsection B, C or D of this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or if the differentiation is based on reasonable factors other than age.

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, deferred compensation or insurance plan, which is not a subterfuge to evade the purposes of the age discrimination provisions of this article, except that no

employee benefit plan may excuse the failure to hire any individual and no seniority system or employee benefit plan may require or permit the involuntary retirement of any individual specified by section 41-1465 because of the individual's age.

(c) To discharge or otherwise discipline an individual for good cause.

5. FOR A RELIGIOUS ORGANIZATION, INCLUDING AN EDUCATIONAL INSTITUTION SUBSTANTIALLY CONTROLLED OR SUPPORTED BY A RELIGIOUS ORGANIZATION, TO FAIL TO HIRE, REFUSE TO HIRE, REFUSE TO PROMOTE OR TERMINATE AN EMPLOYEE ON THE BASIS OF THAT EMPLOYEE'S GENDER, GENDER IDENTITY OR EXPRESSION OR SEXUAL ORIENTATION, IF THE POSITION IS DIRECTLY RELATED TO THE RELIGIOUS FUNCTIONS OF THE ORGANIZATION OR DIRECTLY INVOLVED IN THE PROVISION OF EDUCATION TO STUDENTS OF AN EDUCATIONAL INSTITUTION SUBSTANTIALLY CONTROLLED OR SUPPORTED BY A RELIGIOUS ORGANIZATION.

H. As used in this article, unlawful employment practice does not include any action or measure taken by an employer, labor organization, joint labor-management committee or employment agency with respect to an individual who is a member of the communist party of the United States or of any other organization required to register as a communist-action or communist-front organization by final order of the subversive activities control board pursuant to the subversive activities control act of 1950.

I. Notwithstanding any other provision of this article, it is not an unlawful employment practice:

1. For an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system ~~which~~ THAT measures earnings by quantity or quality of production or to employees who work in different locations, provided that these differences are not the result of an intention to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, AGE or national origin.

2. For an employer to give and act upon the results of any professionally developed ability test, provided that the test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, AGE or national origin.

3. For any employer to differentiate upon the basis of ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or disability in determining the amount of the wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of section 6(d) or section 14 of the fair labor standards act of 1938, as amended (29 United States Code section 206(d)).

J. Nothing contained in this chapter applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.

1 K. Nothing contained in this article or article 6 of this chapter
2 requires any employer, employment agency, labor organization or joint
3 labor-management committee subject to this article to grant preferential
4 treatment to any individual or group because of the race, color, religion,
5 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or national
6 origin of the individual or group on account of an imbalance ~~which~~ THAT may
7 exist with respect to the total number or percentage of persons of any race,
8 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
9 ORIENTATION or national origin employed by any employer, referred or
10 classified for employment by any employment agency or labor organization,
11 admitted to membership or classified by any labor organization or admitted to
12 or employed in any apprenticeship or other training program, in comparison
13 with the total number or percentage of persons of that race, color, religion,
14 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or national
15 origin in any community, state, section or other area, or in the available
16 ~~work force~~ WORKFORCE in any community, state, section or other area. NOTHING
17 CONTAINED IN THIS ARTICLE OR ARTICLE 6 OF THIS CHAPTER REQUIRES ANY EMPLOYER,
18 EMPLOYMENT AGENCY, LABOR ORGANIZATION OR JOINT LABOR-MANAGEMENT COMMITTEE
19 SUBJECT TO THIS ARTICLE TO RETAIN OR MAINTAIN RECORDS REGARDING AN
20 INDIVIDUAL'S OR GROUP'S GENDER, GENDER IDENTITY OR EXPRESSION OR SEXUAL
21 ORIENTATION.

22 L. Nothing in the age discrimination prohibitions of this article may
23 be construed to prohibit compulsory retirement of any employee who has
24 attained sixty-five years of age and who, for the two year period immediately
25 before retirement, is employed in a bona fide executive or high policymaking
26 position, if the employee is entitled to an immediate nonforfeitable annual
27 retirement benefit from a pension, profit sharing, savings or deferred
28 compensation plan or any combination of plans of the employer for the
29 employee, ~~which~~ THAT equals, in the aggregate, at least forty-four thousand
30 dollars. In applying the retirement benefit test of this subsection, if any
31 retirement benefit is in a form other than a straight life annuity, with no
32 ancillary benefits, or if employees contribute to the plan or make rollover
33 contributions, the benefit shall be adjusted in accordance with rules adopted
34 by the division so the benefit is the equivalent of a straight life annuity,
35 with no ancillary benefits, under a plan to which employees do not contribute
36 and under which no rollover contributions are made.

37 M. A covered entity may require that an individual with a disability
38 shall not pose a direct threat to the health or safety of other individuals
39 in the workplace. For the purposes of this subsection, "direct threat" means
40 a significant risk to the health or safety of others that cannot be
41 eliminated by reasonable accommodation.

42 N. For the purposes of this section and section 41-1481, with respect
43 to employers or employment practices involving a disability, "individual"
44 means a qualified individual with a disability.

1 Sec. 2. Section 41-1464, Arizona Revised Statutes, is amended to read:

2 41-1464. Other unlawful employment practices: opposition to
3 unlawful practices: filing of charges; participation
4 in proceedings; notices and advertisements for
5 employment

6 A. It is an unlawful employment practice for an employer to
7 discriminate against any ~~of his~~ employees or applicants for employment, for
8 an employment agency or joint labor-management committee controlling
9 apprenticeship or other training or retraining programs, including on-the-job
10 training programs, to discriminate against any individual or for a labor
11 organization to discriminate against any member or applicant for membership
12 because the member or applicant has opposed any practice ~~which~~ THAT is an
13 unlawful employment practice under this article or has made a charge,
14 testified, assisted or participated in any manner in an investigation,
15 proceeding or hearing under article 6 of this chapter.

16 B. It is AN unlawful employment practice for an employer, labor
17 organization, employment agency or joint labor-management committee
18 controlling apprenticeship or other training or retraining programs,
19 including on-the-job training programs, to print or publish or cause to be
20 printed or published any notice or advertisement relating to employment by
21 ~~such~~ an employer or membership in or any classification or referral for
22 employment by ~~such~~ a labor organization, ~~or relating to~~ any classification or
23 referral for employment by ~~such~~ an employment agency or ~~relating to~~ admission
24 or ~~to~~ employment in any program established to provide apprenticeship or
25 other training by ~~such~~ a joint labor-management committee indicating any
26 preference, limitation, specification or discrimination based on race, color,
27 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or
28 national origin, except that such a notice or advertisement may indicate a
29 preference, limitation, specification or discrimination based on religion,
30 ~~sex~~ GENDER or national origin when religion, ~~sex~~ GENDER, GENDER IDENTITY OR
31 EXPRESSION, SEXUAL ORIENTATION or national origin is a bona fide occupational
32 qualification for employment.

33 C. It is unlawful for an employer, labor organization or employment
34 agency to print or publish or cause to be printed or published any notice or
35 advertisement relating to employment by an employer or membership in or any
36 classification or referral for employment by a labor organization ~~or relating~~
37 ~~to any classification or referral for employment by a labor organization~~ or
38 relating to any classification or referral for employment by an employment
39 agency, indicating any preference, limitation, specification or
40 discrimination based on age, except ~~such a~~ THAT THE notice or advertisement
41 may indicate a preference, limitation, specification or discrimination based
42 on age when age is a bona fide occupational qualification for employment.